

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
AT BECKLEY

UNITED STATES OF AMERICA,

v.

CRIMINAL CASE NO. 5:02-00120-02

HARTFORD SELLERS, SR.

ORDER

By Standing Order entered on May 20, 2002, and filed in this case on March 3, 2003, this matter was referred to United States Magistrate Judge R. Clarke VanDervort. Pursuant to 28 U.S.C. § 636(b)(1)(B), the Standing Order directs Magistrate Judge VanDervort to submit proposed findings and recommendation concerning the disposition of this matter. Magistrate Judge VanDervort submitted his Proposed Findings and Recommendation on May 3, 2005, and proposed that this court (1) confirm and accept the Magistrate Judge's findings contained within his Proposed Findings and Recommendation, and (2) deny defendant's Motion Pursuant to 18 U.S.C. § 3582 (Docket No. 123).

In accordance with the provisions of 28 U.S.C. § 636(b), the parties were allotted ten days, plus three mailing days, in which to file any objections to Magistrate Judge VanDervort's Proposed Findings and Recommendation. The failure of any party to file objections within the appropriate time frame constitutes a waiver of such party's right to a de novo review by this court.

Snyder v. Ridenour, 889 F.2d 1363 (4th Cir. 1989); Thomas v. Arn, 474 U.S. 140 (1985). Moreover, this court need not conduct a de

novo review when a petitioner "makes general and conclusory objections that do not direct the court to a specific error in the magistrate's proposed findings and recommendations." Orpiano v. Johnson, 687 F.2d 44, 47 (4th Cir. 1982).

Here, defendant timely filed objections to the Magistrate Judge's Proposed Findings and Recommendations. In his objections, petitioner discusses how former Chief Judge Charles H. Haden II calculated his sentence, and states that he filed a motion once "Amendment 467 came out."¹ Defendant's objections are "general and conclusory" as discussed in Orpiano in that they do not direct the district court to any specific errors in the Proposed Findings and Recommendations and instead only restate arguments contained in petitioner's earlier pleadings. See 687 F.2d at 47. As such, the court need not conduct de novo review.

Having reviewed the Findings and Recommendation filed by Magistrate Judge VanDervort, the court (1) CONFIRMS and ACCEPTS the factual and legal analysis within the magistrate judge's Proposed Findings and Recommendation, and (2) DENIES defendant's Motion pursuant to 18 U.S.C. § 3582 (Docket No. 123).

¹ Defendant appears to be referring to Amendment 657, which amends Note B to U.S.S.G. § 2D1.1 as it refers to the weight of Oxycodone. Amendment 657 was discussed in the magistrate judge's Findings and Recommendations. Amendment 467 amended U.S.S.G. § 6B1.2, dealing with plea bargaining, and does not appear applicable to defendant's case as was discussed in the Findings and Recommendations.

The Clerk is further directed to forward a certified copy of this Order to all counsel of record and the plaintiff, pro se.

IT IS SO ORDERED this 4th day of October, 2005.

ENTER:

A handwritten signature in black ink, reading "David A. Faber", is written over a horizontal line.

David A. Faber
Chief Judge